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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 8 August 1997, at 10 a.m.

Chairman: Mr. BENGOA

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HUMAN RIGHTS OF INDIGENOUS PEOPLES:

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND

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The meeting was called to order at 10.15 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued) (E/CN.4/Sub.2/1997/4, 5 and 37; E/CN.4/1998/3-E/CN.4/Sub.2/1997/35; E/CN.4/1998/4-E/CN.4/Sub.2/1997/36)

1. Mr. TAHER (Observer for the Syrian Arab Republic) said that there was no justification for overlooking human rights violations in certain cases on the grounds that the Sub-Commission was duplicating the work of other bodies. The odious system of apartheid would never have been eradicated without a concerted effort on the part of all organs of the United Nations system.

2. Israel maintained its military occupation of Palestinian land, including Jerusalem, the Syrian Golan Heights, which it had annexed in 1981, southern Lebanon and the western Bekaa. A few days previously the Israeli Parliament, the Knesset, had passed legislation prohibiting any future withdrawal from the Golan Heights. Israeli nationality was imposed on the Syrian inhabitants of the area and their land was confiscated and seized by Jewish settlers in a policy based on religious and racial fanaticism. Israel's violations of human rights and of the purposes and principles of the Charter of the United Nations, Security Council and General Assembly resolutions, the 1949 Geneva Conventions and the Hague Convention of 1907 were well documented in over 30 reports by the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.

3. Recent Israeli practices in the West Bank, Jerusalem and the Gaza Strip were a flagrant breach of international, humanitarian and moral law. Palestinian homes had been demolished and towns and villages sealed off, there was a transport ban on food and other commodities and the labour force had been immobilized. The Palestinian population was under permanent siege in its own land.

4. The Sub-Commission must take a stand on a situation that was sounding the death knell of the Middle East peace process and creating an explosive atmosphere in the region. It could not ignore attempts to obliterate the identity of the occupied Syrian Golan Heights and the city of Jerusalem, or pass over in silence the excavations beneath the Al-Aqsa Mosque and the continued expansion of Jewish settlements in occupied land. The Israeli occupation authorities had treated Muslim and Christian holy places with disrespect and had insulted the Prophet and the Virgin Mary. It was surely time to react to Israel's continuous flouting of international public opinion and international law, its gradual encroachment on Arab land through the building of settlements, its Judaization policy, its oppression and torture of the Palestinians and other Arabs living under occupation, its raids on southern Lebanon and its continuous war-mongering.

5. The Arab and international parties were still committed to the peace process on the basis of the principles laid down at the Madrid Conference, in

particular that of land for peace. He therefore believed and hoped that the Sub-Commission would reaffirm its position on an extremely serious issue, giving expression to the conscience of the international community based on the Charter of the United Nations and on international law.

6. Mr. RAMLAWI (Observer for Palestine) said that the record of Israeli military occupation of Palestinian territory, including Arab East Jerusalem, for the past 30 years had been one of continuous violations of the whole gamut of human rights. Resolutions and condemnations had been ignored and appeals to the Israeli Government by the Security Council, the General Assembly, the Commission on Human Rights and the Sub-Commission had fallen on deaf ears. International treaties, particularly the Fourth Geneva Convention of 1949 Relative to the Protection of Civilian Persons in Time of War, whose applicability to occupied Palestinian territory had been emphasized by the international community since 1967, had been flouted. The current Prime Minister, Binyamin Netanyahu, had described the United Nations as an immoral institution because the General Assembly had adopted a resolution at its tenth emergency special session (A/RES/ES-10/2) condemning Israeli settlements, particularly in Jabal Abu Ghunaym in occupied East Jerusalem.

7. He drew attention to a series of reports and resolutions documenting Israeli human rights violations, in particular the Secretary-General's report (S/1997/49) of 26 June 1997, the reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, resolutions of the General Assembly, and reports on torture by the Committee against Torture (CAT/C/33/Add.2/Rev.1) and Amnesty International, referring, in particular, to the decision by the Israeli Supreme Court to legitimize the torture of Palestinians. The human rights violations mentioned in the reports and resolutions included shoot-to-kill policies, torture during interrogation, confiscation of Palestinian land, settlement-building, imprisonment without trial, collective punishment and the demolition of houses.

8. The practices that had led the Sub-Commission to adopt resolution 10/1988 and the Commission on Human Rights to adopt a whole series of resolutions condemning Israel for offences against the peace and security of mankind had not changed an iota over the past 30 years.

9. Just as Israel consistently disregarded its international commitments, it was currently disregarding the agreements it had signed with the Palestine Liberation Organization, thereby wrecking the peace process. Its denial of the principles on which that process had been built since the Madrid Conference, particularly the land for peace principle and Security Council resolution 242 (1967), and its continued confiscation of land and settlement-building in the occupied territories, including Jerusalem, threatened to unleash war and bloodshed on the region yet again.

10. In retaliation for the explosions in Jerusalem the previous week, for which the Palestinians were not responsible, the Israeli Government had, among other measures, closed international crossing points to Egypt and Jordan, sealed off towns and villages in the West Bank, separated the West Bank from the Gaza Strip, suspended the transfer of funds to the Palestinian Authority in respect of taxes and other dues, prevented ambulances and doctors from

moving freely to attend the sick, halted the vaccination campaign and issued an arrest warrant for the Chief of the Palestinian Police. According to reports by the Israeli intelligence services, Shin Beth and Mossad, the Palestinian Islamic organizations had not been behind the explosions. The finger of suspicion therefore pointed at those who had murdered former Prime Minister Yitzhak Rabin in order to destroy the peace process.

11. He drew attention to documents E/CN.4/Sub.2/1997/35 and 36 concerning racist incidents of religious intolerance perpetrated by settlers in Hebron during the previous two months with the collusion of Israeli soldiers.

12. Mr. BEBARS (Observer for Egypt) said that Egypt viewed all human rights - civil, political, economic, social and cultural - as an integral whole. As different cultures had different outlooks, there was no justification for imposing unacceptable lifestyles on any of them. Egypt rejected selectivity and double standards. Human rights should not be politicized and used as a pretext for interfering in the internal affairs of States or to achieve economic or commercial goals.

13. Peace and stability in the Middle East depended on compliance with international law and equality between States in terms of their rights and duties. In particular, every State had a right to security and to freedom from aggression. Unfortunately, the peace process was in imminent danger of collapse and many of its achievements were seriously jeopardized. Failure to comply with agreements that had been concluded through extremely arduous negotiations led to loss of confidence and mutual distrust. The people could not accept a peace that denied them their basic rights and legitimate aspirations. Moreover, violations of a people's right to its holy places inflamed religious feelings and was extremely damaging to the peace process.

14. Israel must call an immediate halt to settlement-building, closure of the Palestinian territories, destruction of homes, confiscation of land, and practices in Jerusalem which ignored the rights of its Arab inhabitants and of the Muslim and Christian communities.

15. It was only through compliance with the principles adopted at the Madrid Conference, first and foremost the principle of land for peace, that the aspiration of the Palestinian people for self-determination and that of Israel for security could be achieved. Until such time as wisdom prevailed and the bridges of mutual trust were repaired, frustration and despair would escalate and the situation would veer out of control.

16. Peace and stability in the Middle East called for the establishment of a system of regional security based on arrangements that guaranteed equal rights and security for all, keeping arsenals at the lowest possible level and imposing a total ban on weapons of mass destruction, be they nuclear, chemical or biological.

17. He reaffirmed Egypt's rejection of all forms of terrorism and likewise its rejection of the collective punishment of innocent people which violated international law, human rights and fundamental freedoms.

18. With regard to the former Yugoslavia, the signing of the Dayton Agreement in December 1995 had put an end to military aggression against Bosnia and Herzegovina and the shameful policy of ethnic cleansing and had ushered in a new era of peace and stability. Full implementation of the Agreement was essential to ensure that Bosnia and Herzegovina remained an independent and multiracial State. It should be helped to build up a national army and provided with the matériel it needed to resist foreign aggression or a renewed deterioration in the domestic situation following the withdrawal of the Stabilization Force. It should also be given economic and technical assistance for reconstruction and provided with the infrastructure needed to facilitate the return of the refugees to their homes and the restoration of their property. Their safety must be guaranteed by removing elements opposed to democracy, secessionists and those responsible for war crimes and crimes against humanity.

19. Egypt was deeply concerned at the deteriorating political, social, economic and humanitarian situation in the Great Lakes region following the series of armed struggles and massacres that had originated in Rwanda and Burundi. It was essential to seek a peaceful solution to the problems of the region. He called for the speedy prosecution of those responsible for crimes against humanity by the International Tribunal for Rwanda as the surest way of encouraging the refugees and displaced persons to return to their homes and to prevent a repetition of such crimes in the future. He also stressed the importance of implementing the resolutions of the Commission on Human Rights concerning the Great Lakes region in order to preserve its credibility.

20. Mrs. FORERO UCROS said that the end of the cold war had led to expectations of a solution to internal conflicts in different parts of the world. The theory was that, with the end of ideological confrontation, internal conflicts fuelled by political rivalry between the super-Powers would lose their raison d'être. Unfortunately, the expectations had proved vain and defenceless civilians continued to suffer the consequences of persistent confrontations. Her message concerned the humanitarian obligations incumbent on the parties to such conflicts, whether actively involved, agents of the State or irregular groups operating against the State.

21. Orthodox interpreters of international law would claim that the jurisdiction of intergovernmental forums and treaty bodies in terms of the monitoring of human rights was strictly confined to the conduct of States. But a legal distinction between State agents and non-State agents of violence could not be allowed to prevent the Sub-Commission from undertaking a global and integrated analysis of the situation in a particular country or of a particular armed conflict. In practice, there was no academic distinction between human rights and humanitarian law. The victims of a conflict in terms of violations of the right to life, disappearances, kidnapping, torture, extortion or intimidation were all human beings and members of a civilian population who had suffered the consequences of a conflict in which they were not directly involved.

22. Human rights, in a country suffering from widespread violence, could not be limited to the few but had to be universal. Protocol II to the Geneva Conventions provided an ethical code of conduct for all parties to a conflict, covering such clearly-defined acts as torture or hostage-taking. While States

had the primary responsibility for the safety of those living in their territory, they, and other parties to a conflict, had to be held accountable by the international community, in accordance with the Additional Protocols to the Geneva Conventions. There had been a clear evolution in international law towards a recognition that revolutionary movements had international responsibilities and could be held responsible for possible violations of humanitarian law applicable to international armed conflicts and, by extension, to conflicts of an internal nature.

23. Ideally, internal conflicts should be solved by dialogue and negotiation. The problem was how to save the defenceless civilian population from violence, suffering and from the violation of their individual rights. Paradoxically, conflict had to be humanized; the barbaric practices of kidnapping, torture, mass killing and the laying of anti-personnel landmines could not be allowed to be legitimized by silence or indifference on the part of the international community. The latter must unequivocally condemn such practices, whether carried out by a State or by the non-state participants in a conflict. Peaceful solutions could only be reached if all parties acknowledged their duties and responsibilities, and if the international community, States affected by conflict and concerned non-governmental organizations (NGOs) all denounced barbaric practices that were incompatible with respect for human life and dignity and individual freedom. No political or social argument could justify such practices.

24. In situations where human rights were threatened, the International Committee of the Red Cross and NGOs had a major role to play. The state had a duty to encourage NGOs in their work, while the organizations had a duty to be comprehensive in their reporting of particular cases, so as to present a united front in defence of respect for the life and dignity of the individual.

25. The role of the human rights bodies of the United Nations and regional organizations had changed since the end of the cold war, especially in relation to democratic rather than authoritarian Governments. Open and constructive dialogue on the challenges facing societies affected by conflict could be effective in achieving agreement on measures to prevent human rights violations, whatever their origin. The success of the peace processes in countries such as El Salvador and Guatamela showed that negotiation was the appropriate way to achieve peace. The long-standing armed conflict in her own country, Colombia, could be resolved only if the precepts and norms of international humanitarian law were respected by all sides, if individual agents of the State, vigilantes, paramilitary groups and common criminals heeded calls to renounce violence, and if society at large, with the full support of the international community, unanimously rejected violence in all its forms. To achieve a lasting peace, the conflict must be humanized, so as to protect the civilian population. The new Office of the High Commissioner in Colombia would undoubtedly be an effective tool in seeking agreement from all sectors of society. In its moves towards a return to coexistence, the Colombian people needed the support of the international community, on the basis of a comprehensive analysis of the overall context of the violence that had to be overcome.

26. Mr. WEISSBRODT said that the Sub-Commission should accept the challenge set forth in Commission resolution 1997/22 of taking action on exceptional

cases in which new and particularly grave circumstances had arisen that had not received adequate attention from the Commission or other parts of the United Nations system. He would like to mention the situation in countries in each of the five recognized regions of the world on which the Sub-Commission might take action or which deserved greater attention.

27. In the case of Turkey, there was cause for deep concern over the widespread and systematic use of torture and cruel, inhuman and degrading treatment and punishment, extrajudicial, summary and arbitrary executions, forced evictions, and arbitrary arrest. The Sub-Commission should also express its concern at the human rights abuses and violations of humanitarian law by the armed opposition group, the Kurdish Workers' Party (PKK), including the destruction of villages and killing of civilians. However, it should also state that such abuses could not excuse violations of non-derogable human rights and humanitarian law by any Government. Human rights violations in Turkey had already been brought to the attention of the Commission, as well as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Court of Human Rights. While the Turkish Government cooperated with various Commission special rapporteurs and working groups whose work had and would undoubtedly contribute to more transparency and protection of human rights in Turkey, thematic procedures were of limited usefulness in dealing with the human rights abuses in Turkey. A far more effective measure would be for the Turkish Government to invite recognized humanitarian organizations to undertake regular visits to detainees and to protect the civilian population in the south-east of the country. The Sub-Commission could make a unique and distinctive contribution by drawing together all the evidence, expressing its overall concern, and encouraging further efforts towards dialogue and improvement.

28. The increasing number of human rights violations and a rise of authoritarian power had led to a constitutional crisis in Belarus in the last few years. Since the parliamentary elections in 1995, in which only 119 of the 260 available seats had been filled and which had been considered neither free nor fair by outside observers, the President had defied the wishes of both Parliament and the Constitutional Court by attempting to rule by decree. The independence of the judiciary had been undermined following an amendment to the Constitution empowering the President to appoint six of the 12 judges forming the Constitutional Court. Further, there had been an increasing number of politically motivated judgements against individuals deemed inadequately loyal as a consequence of the material dependence of district and city court judges on the Government. Freedom of association and of the press were severely restricted, journalists were verbally and physically harassed. The Commission's Special Rapporteur on freedom of expression, who had recently visited the country, might explore those issues in his forthcoming report. There had also been reports of hundreds of people arrested, dismissed from their employment or evicted from their homes for taking part in demonstrations; some were reported to have been beaten or ill-treated by police. NGOs and trade unions had been harassed and were unable to secure a proper legal defence. Long periods of pre-trial detention, sometimes lasting as much as three years, were being reported. The Council of Europe and the Organization for Security and Cooperation in Europe had taken action by suspending the status previously accorded to Belarus; the Human Rights Committee, however, had been unable to take up the case of Belarus at its

July 1997 meeting as the Government of Belarus had indicated that it would not attend. The Sub-Commission should take the situation in Belarus under consideration for further action if matters did not improve.

29. Despite recent improvements in the human rights situation in Peru, there were troubling reports of pervasive governmental surveillance, arbitrary detention, prolonged pre-trial detention and attacks on the judiciary. Although the press in Peru was generally fairly free the Government had attempted to shut down a television station which had broadcast a report on widespread eavesdropping on legislators, business people and journalists by the Peruvian intelligence agency and the tele-journalist responsible had been deprived of Peruvian nationality. While quite a number of individuals had been released from prison following the setting-up of a special commission to review cases of accused terrorists and to recommend a presidential pardon for those who had been unjustly detained, it seemed that fair trial procedures were still lacking and that some people were still being inappropriately detained. The independence of the judiciary had also been called into question by the dismissal of three judges in response to the Constitutional Tribunal ruling holding it illegal for the President to be re-elected for a third term. While attacks on civilians by the Sendero Luminoso and the Movimento Revolucionario de Tupac Amaru posed difficulties for the authorities, they did not excuse the human rights infringements by the Government. The Human Rights Committee had repeated its concern that the amnesty laws, whereby all military, police and civilian agents of the State were absolved of criminal liability for charges relating to the "war against terrorism" between 1980 and 1995, were incompatible with the duty of States to investigate human rights violations (CCPR/C/79/Add.67 (1996)). Such laws prevented investigations of human rights violations and also reduced the possibilities for victims of human rights abuses to receive just compensation. Needless to say, they created an atmosphere of impunity among human rights violators. Although Peru had taken action to improve its human rights record, the Sub-Commission should keep the situation in Peru under consideration, as it had promised to do at its previous session.

30. There were encouraging signs that the Government of the Democratic People's Republic of Korea was prepared to enter into dialogue on the human rights situation in that country, but concrete information was still difficult to obtain. The Penal Code prescribed the death penalty and other severe punishment for such "crimes against the revolution", as defection, attempted defection, slander of the State and Party policies, and listening to foreign broadcasts. There were credible indications of the ill-treatment of prisoners, many of whom had died from torture, disease, starvation or exposure. Forced prison labour was widespread. Whole families, including children, were often imprisoned together, many for political reasons. Indeed, defectors claimed that there were tens of thousands of political prisoners in maximum security camps. Despite the restricted amount of first-hand information available, there was sufficient evidence of widespread human rights violations to merit the Sub-Commission's attention.

31. The ceasefire in the civil war in the Republic of the Congo in which about 2,000 people died and 20,000 civilians had been forced to flee their homes had not resolved the basic problems. Brazzaville was still divided into three parts, each controlled by a militia and an individual associated with a

different ethnic community. The elections scheduled for July 1997 had been called off. The Sub-Commission could help by calling on all parties to create conditions for the delivery of medical care and other social services to Brazzaville, to agree on a sensible date for holding elections, to select an independent, respected and impartial elections commission, to allow individuals to seek political office, freely and fairly, to agree to abide by the results of those elections, to develop a civil society as a prerequisite to peace and democracy, confidence-building measures to allow freedom of movement, and mechanisms for transparency in the future Government. The countries he had mentioned comprised a regional sample on which the Sub-Commission could make a useful contribution in drawing attention to new serious human rights problems. The Sub-Commission must act on at least some situations at its current session if it was not to risk losing an important element of its role in protecting human rights, disappointing an important part of its constituency and undermining its raison d'être.

32. Mr. BOSSUYT said that time constraints and the difficulty in obtaining reliable information on highly complex human rights violations prevented the Sub-Commission from reviewing the situation of human rights in all countries. He had chosen to concentrate on the situation in three Central African countries where the extreme seriousness of events had focused the attention of the international community on human rights.

33. The situation in Burundi had deteriorated since the murder of President Ndadaye in 1993, and there had been frequent warnings of impending genocide. However, the fact that acts of genocide had caused thousands of deaths immediately after the President's assassination tended to be overlooked. The excellent report of the international commission responsible for investigating the assassination and subsequent massacres (S/1996/682), had concluded that the murder had been planned in advance and carried out by senior staff officers, and that the massacre of Tutsis had not been a spontaneous reaction by Hutu farmers but acts incited by the leaders of FRODEBU, who had been supported in exile by the Rwandan President and his party. The report stressed that the massacres had not just been a hostile act by one political group against another, but an attempt to destroy the Tutsis as an ethnic group. The genocide against the Tutsi minority in Burundi in October 1993 had been a rehearsal for the genocide that occurred in Rwanda after April 1994; those acts had been instigated by leaders who shared a common racist ideology.

34. Since President Ndadaye's murder, Burundi had been a focus of the international community's attention. Particularly noteworthy had been the role of the special representative of the Secretary-General, Mr. Ahmadou Ould Abdallah, who for two years had done his utmost to avoid disaster. After his departure from Burundi, international diplomacy, which, until then - rightly, in the speaker's view - had gambled on a rapprochement of the moderate forces, had suddenly changed tack, backing an arrangement between the extremist forces and calling for the presence of an international military force. The ambiguity, not to say duplicity, surrounding the true objectives of such a military force had led to a power vacuum, since filled by the return of President Buyoya in July 1996. Immediately afterwards, neighbouring countries, many of whose democratic credentials were not irreproachable, had imposed an economic embargo on Burundi, the international

legality of which was highly debatable. The harmful effects of that embargo were clearly set forth in the most recent report of the Special Rapporteur (E/CN.4/1997/12), dated 10 February 1997, paragraph 79 of which concluded that the sanctions had in any case failed to achieve their aims. In the speaker's view, only three groups supported the embargo, namely: extremists of both sides, who hoped that a further deterioration in the situation would justify them in assuming absolute power; a few businessmen, who were making a fortune on the black market; and some international mediators anxious not to lose face. It was to be hoped that the negotiations due to be held shortly would at least lead to the lifting of the embargo, which not only exacerbated the sufferings of the population in general and of the many displaced persons in particular, but which was also proving an obstacle to a realistic political settlement of the crisis.

35. As for the situation in Rwanda, as long ago as August 1993, the Special Rapporteur on extrajudicial, summary or arbitrary executions had stated that the Convention on the Prevention and Punishment of the Crime of Genocide was being violated in Rwanda. In March 1994 the Committee on the Elimination of Racial Discrimination had called for the crimes against humanity committed in Rwanda to be investigated; yet that same month, the Commission on Human Rights had contented itself with continuing to deal with that situation on the basis of the communications that the Sub-Commission had transmitted to it in 1992 under the 1503 procedure. Following the visit to Rwanda by the United Nations High Commissioner for Human Rights and Mr. Joinet in May 1994 and the special session of the Commission, Mr. René Degni-Ségui had been appointed Special Rapporteur on Rwanda. His reports had provided a thorough analysis of the causes of the genocide, and had also adopted a critical attitude towards the role of the United Nations in Rwanda.

36. In his own country, Belgium, a Senate committee of inquiry had just concluded a series of more than 100 hearings on the events in Rwanda, events which had cost the lives of almost a million Rwandese and of 10 Blue Helmets. It was most regrettable that the Secretary-General had not authorized United Nations officials to testify before that committee; while no effort had been made by the Organization to throw light on the extent of its responsibility for the tragedy. Nor had any further light been thrown on the attack on the Rwandese and Burundi presidential aircraft that had sparked off the genocide whose premeditated, planned, systematic and methodical character had been recognized by the three experts appointed by the Secretary-General at the request of the Security Council. Meanwhile, Commission on Human Rights resolution 1997/66, adopted on 16 April 1997, deplored the deterioration of the situation of human rights in Rwanda since the start of 1997; ended the Special Rapporteur's mandate; and requested the Chairman of the Commission to appoint a special representative with the mandate, inter alia, to facilitate the creation and effective functioning of an independent national human rights commission and to make recommendations concerning technical assistance to the Government of Rwanda in the field of human rights.

37. Between 1985 and 1993 the situation of human rights in Zaire had several times been considered under the 1503 procedure, and in June 1994 Mr. Roberto Garretón had been appointed Special Rapporteur on the situation of human rights in Zaire. His latest report, dated 2 April 1997, had been prepared at the request of the High Commissioner for Human Rights. According

to a press release issued on 6 March 1997, the High Commissioner had entrusted the Special Rapporteur with the task of investigating allegations of massacres of Hutu refugees in the North and South Kivu regions "occupied by AFDL rebels". He found it strange, to say the least, that a Special Rapporteur who had received his mandate from the Commission and had been appointed by its Chairman should be entrusted by the High Commissioner for Human Rights with a supplementary mandate to investigate violations of human rights in an armed conflict allegedly committed by only one of the parties thereto. It appeared from paragraphs 43, 44 and 47 of his report (E/CN.4/1997/6/Add.2) that the Special Rapporteur had himself been aware of the unilateral, not to say partisan, character of that supplementary mandate.

38. In its most recent resolution (resolution 1997/58) concerning Zaire, adopted on 15 April 1997, the Commission decided, in paragraph 6 (a) to request the Special Rapporteurs on the situation of human rights in Zaire and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to investigate allegations of massacres and other issues affecting human rights arising from the situation prevailing in eastern Zaire since September 1996. Although that mission was less unilateral than the one entrusted to the Special Rapporteur by the High Commissioner, the choice of region and time-frame indicated a manifest lack of balance. It was scarcely surprising that the newly installed Government of the Democratic Republic of the Congo had objected to the mission. It was his understanding that the terms of the mission had been redefined so as to permit an investigation without a priori judgements and, above all, one from whose scope no victims or perpetrators were excluded.

39. As for the fate of the Rwandan refugees in the Democratic Republic of the Congo, it was of the utmost importance not to lose sight of the origin of the problems. It ill befitted those jointly responsible for the origins of a problem to lay the blame for its consequences at the door of those who bore no responsibility for its causes. In the case of Zaire, that was particularly true of the international community, which bore enormous responsibility for the situation for five reasons.

40. First, the international community had neglected to take the necessary steps to prevent the genocide in Rwanda and, when the genocide had begun, it had withdrawn most of the military contingents that might have halted it.

41. Secondly, it had authorized an operation that had enabled the Rwandan armed forces and militias, who were heavily implicated in the genocide, to leave the country with their weapons, driving hundreds of thousands of Rwandese before them as they went.

42. Thirdly, for more than two years it had allowed the former Rwandan regime to hold hundreds of thousands of Rwandans hostage through propaganda and intimidation, and to continue to arm itself by diverting humanitarian aid.

43. Fourthly, it had not given the International Tribunal for Rwanda at Arusha the means to punish those principally responsible for the genocide, so that three years later no one had been sentenced.

44. Fifthly, it had taken no steps to prevent Rwandan refugees from constantly threatening the Congolese population, committing murderous attacks on the Congolese Tutsi population, and making regular incursions into Rwandan territory in order to carry out attacks and murder witnesses of the genocide.

45. Those reasons certainly did not excuse, still less justify, the slaughter of Rwandan refugees. Nevertheless, they suggested a need to seek solutions with the Congolese and Rwandan authorities in a humbler and less arrogant spirit.

46. Mr. WU Jianmin (Observer for China) said that the most challenging task currently facing the United Nations human rights bodies was to rid themselves of the cold war mentality which, although the cold war had formally come to an end in 1991, continued to haunt the world. The 185 Member States of the United Nations shared much common ground; yet it was characteristic of that mentality to focus on their differences. Those that espoused it saw everything in the world as either black or white, and rejected all shades of opinion other than their own. Such a mentality could only perpetuate confrontation, of which the international community had seen all too much, with the cause of human rights as the ultimate loser.

47. It was high time to repudiate that mentality and concentrate instead on common ground, promoting the cause of human rights on the basis of common interests, as reflected in the Universal Declaration of Human Rights and other international human rights instruments. Although human rights were broadly based, over the years more emphasis had been placed on civil, political and individual rights, while economic, social, cultural and collective rights had rarely been touched upon. Thus, 23 per cent of the world's population went hungry, so that even their most basic human right, the right to survival, was not guaranteed. Alleviating the poverty of 1.3 billion human beings was thus the international community's most pressing task, and solving that problem through a pooling of experience would be a more constructive approach to the promotion of human rights than was indulgence in recriminations. In the past there had been too much confrontation, too little cooperation, too much rhetoric, and too little action in the field of human rights. The experts of the Sub-Commission, the "think tank" of the United Nations human rights programme, should come forward with new ideas to replace the cold war mentality, enabling the cause of human rights to make substantial progress.

48. Mrs. PALLEY said that what she had to say would please few, but was the fruit of her 10 years on the Sub-Commission. If members were honest, they must acknowledge that agenda item 2 was dying - indeed, but for some recent statements, particularly that by Mr. Weissbrodt, she would have said that it was already dead. Governments were unwilling to be subjected to resolutions, then placed on the Commission's agenda, following public proceedings in the Sub-Commission. Regardless of some of her colleagues' rhetoric about independent experts standing up to pressure by the Commission and its influential members, the fact remained that the Commission was the ringmaster, and had been flicking its whip at the lions in the Sub-Commission circus. In reality, the high-water mark of the age of human rights was a historic memory. States made up the United Nations system, States nominated and elected the Sub-Commission's members, and for most States, "human rights" had just

become another foreign policy piece of argumentation to utilize in their self-interest and to exploit as justification for foreign policy interventions.

49. It would be wrong to think, however, that the cold war had merely been a period for ideological exploitation of human rights arguments. There really had been far greater human rights violations by one side than by the other. One should not be so cynical and so taken in by conspiracy theories and rhetoric, as to believe that, until 1990, there had not been genuine concern for human rights and for peace, as well, of course, as self-interest. Today, perhaps only Russia was deeply concerned about human rights - the rights of the Russian Diaspora in north-eastern Europe and the southern Turkic Republics. The West now wanted "constructive engagement": a polite way of saying "I'd like to increase my trade with you".

50. Furthermore, leaders of independent States - who had invoked civil and political rights in their struggle against imperialism, who had given flesh to the right to self-determination and invented the rights to development, to peace and to the environment - had acquired selective memories. Of course, some States now beginning to speak of human rights had no history of recognizing them as law either internally or internationally and had missed out on five decades of historical developments of human rights. Indeed, only two decades ago they had not even developed their own legal systems. Their leaders forgot that civil and political rights and that economic, social and cultural rights had first been formulated in the Northern world, and they brushed aside civil and political rights as having been invented in and imposed from the West. As for invoking "Asian values", she wished to emphasize that Asia had no monopoly of human rights values regarding respect for human dignity, respect for the family, respect for morality, etc. All those values were human and the product of human thought, wherever they first might have been fully formulated. That there had been more detailed formulation of some values and concepts in the West or North or East was an historical accident. It was not a justification for rejecting them. Asian countries did not reject the silicon chip, antibiotics or engineering technology. They did not reject the truck, the car and the aeroplane: transport, whether by buffalo, donkey, camel or canoe, had always been a human concern. And, as with the formulation of human rights rights values and concepts, many geographical regions had contributed. Modern science had been built on Near- and Middle-East foundations of scientific thought, mathematics and physics, and was now universal. So were human rights.

51. There were two reasons for the rejection of so-called "Western" human rights values: resentment at moralizing by some Western States, who "could not see the beam in their own eyes"; and the current attempt by certain autocracies to rationalize their flouting of human rights standards.

52. Even some of her usually clear-minded colleagues had been taken in, partly because of natural irritation at the arrogance of a super-Power that applied, not double, but multiple standards. They had even been diverted by their own conspiracy theories. She said that as one who came from the third world and who would always be anti-imperialist. Were the world's human rights and economic ills really predominantly caused by a trilogy of transnational corporations, the media and the intelligence services? Did

that cause or perpetuate underdevelopment? Of course, colonialism had been exploitative - and had also brought some advantages, as well as leaving a legacy of bitterness, perpetuated by the dominant economic position Northern States had continued to exploit. But much of Southern and third world disadvantage was geographically dictated: by the climate, the soils, the water supply, the epidemic diseases, the cultural problems of social relationships and of excessive human propagation rates. It was the States of today, 50 years after the independence of great Asian States, and even 23 years after the ending of the Portuguese Empire, about which the Sub-Commission was concerned. The colonial legacy could not forever be used as an alibi. One should stop aiming at that easy target to defend States against justified allegations of violations of human rights, and also to buttress arguments for essential structural adjustment. Instead, States should ask themselves who was to blame, and should acknowledge that the blame lay principally with themselves and their Governments, especially those Governments which had squandered their opportunities by engaging in ideological policies of "nation-building" - suppressing diversity, pursuing majority ethnic domination and imposition of standards; or had sought to perpetuate their own internal power; or had pursued policies of aggrandizement and prestigious schemes (aided by the World Bank, donor Powers and their contractors); or had corruptly syphoned off as much as half the aid made available and had doubled contract prices for State activities.

53. The ills and human rights violations of many kinds that afflicted a wide range of States from democracies, like India and Sri Lanka, to big military Powers like Turkey, to the tiny kingdom of Bhutan, and which likewise afflicted a range of Latin American States like Peru, to Middle East States like Bahrain had been explained as due to terrorism and the need to combat it. But, as Mrs. Forero Ucros had pointed out, even terrorists had human rights. Certain human rights were absolute, inter alia, the right to life, and the right not to be tortured and inhumanely treated. As for the host civilian populations of States where there was terrorism, they were not to be equated with terrorists or subjected to indiscriminate brutal treatment by police and security forces. However great one's abhorrence of terrorism, one could not accept the notion that "anything goes" in combating it. The Romans had been wrong to say, 2,000 years previously, "inter arma, silent leges". International law and human rights had developed since then, and they must continue to apply even in armed conflict. Peruvian terrorists had indeed used wicked means in their attempt to draw the world's attention to the living death inflicted on terrorist prisoners in Peruvian prisons. But despite that wickedness, the world should not countenance such prison conditions in the twentieth century as were alleged to exist in Peru.

54. Nor was it an excuse that a foreign Power was sponsoring terrorism. Everyone knew which States were alleged directly to have done so, or indirectly to have stimulated and financed terrorism and armed movements. She would single out three: the Islamic Republic of Iran, Pakistan and the United States of America, which had created Frankenstein monsters. Why did the Sub-Commission have a triple standard, adopting a resolution on the situation in the Islamic Republic of Iran, murmurings about the United States of America and the Central Intelligence Agency (CIA); and maintaining silence about Pakistan?

55. The different treatment accorded to the Islamic Republic of Iran and Pakistan by the Sub-Commission was paralleled by Western States' willingness to have good relations with one State yet not with another. While she did not believe in "constructive engagement" in its secondary sense of "appeasement", she did believe that a reconciliation between the West and the Islamic Republic of Iran was imperative. That required due consideration by that State (and other similar States) that were theocratic of their policies at home and abroad. At least, in the Islamic Republic of Iran, she believed that some readjustment was starting.

56. Throughout her early life she had heard whites saying: "one man; one vote once." That had been proved wrong - even if there had been and perhaps would be further vicissitudes. Democracy included the right of the electorate to make mistakes. That was why the Sub-Commission had been so wrong to ignore the setting aside of the electoral process in Algeria: now, 70,000 people were dead. She hoped that that pattern of thwarting democracy, even if one disliked the outcome, would not be followed by other States with powerful armies, such as Turkey.

57. On the situational aspects, the Sub-Commission must not take the easy tranquillizer of saying "It's a political problem, for political solution and necessarily slow and long-term internal reforms". It was even urged by some that pronouncements by the Sub-Commission would provoke Governments into negativism and give terrorists material for exploitation. Governments were not so weak-minded: they did what they thought was right in the light of their own interests and, in her view, were unlikely to be very much swayed by the Sub-Commission. But she doubted whether her views were very much shared. Instead, she wondered whether the will of the Sub-Commission as a whole had been shaken by such arguments and by the urgings of diplomats. She hoped she was wrong. She had been much encouraged by Mr. Weissbrodt's courageous, authoritative and measured intervention.

58. What could be saved from the wreck of the Sub-Commission's monitoring powers under item 2? The NGOs, which put such skill and effort into their contributions yet received so little in return, might well consider several courses of action.

59. First, they should concentrate their efforts on the Commission, although she must warn them that States' antagonism to human rights, when invoked against them, might in the longer term cause even the Commission to close down its monitoring activities. Second, NGOs should start taking more effective action based on their item 2 contributions: Why did they not coordinate better with the media? Each day there was a mass of newsworthy information which appeared mostly in Geneva newspapers or might be sent home by nationally based NGOs. But what about proper briefing of the international press? Why did the NGOs not cooperate and appoint two press officers to brief the media before and after each day's interventions? Governments were affected by the media. Third, why did the NGOs not collect their interventions and publish them in a report, as Amnesty International did, immediately after each session of the Sub-Commission? With modern technology that could be done within a week, in the form of 60 or so contributions and an index of States and of the rights allegedly violated. That again should be given to the media. It would be helpful to the Commission, as well. A copy should also be sent to each

State's Foreign Ministry. Lastly, NGOs had for too long undervalued the 1503 confidential procedure. States were prepared, or professed to be prepared, to be confidentially considered under that procedure. Provided that the right communications were submitted in time, States could reach the Commission level within 16 months. She emphasized the right time, because if a communication was submitted later than, say November, there was a tendency for States to be given more time to answer.

60. The 1503 procedure required authoritative, systematic, fully documented communications, which perhaps only the big NGOs could provide. General allegations did not suffice. They must be backed by specific facts from illustrative individual cases, since individual cases themselves were not admissible. There should be proper statistics, if possible, and communications should explain why domestic remedies were unavailable. What NGOs did publicly, they should also do confidentially. If NGOs really got their act together, it would, for example, be possible to have a Special Rapporteur appointed by the Commission even for a super-Power. Why, without naming States, was there no thoroughly documented communication against a State with racial discrimination against Blacks and Hispanics, with police forces repeatedly acting in violation of human rights, and with prison conditions which systematically, as a matter of administrative practice, violated human rights? Communications should, however, never use language abusive of States, otherwise their communications would be inadmissible. She advised NGOs to consult the Secretariat on the modalities of the 1503 procedure. Given the right material, she believed that the Sub-Commission would, after scrutinizing the government replies almost invariably elicited by communications, take action appropriate to a human rights monitoring body, even if they were currently reluctant to act under item 2.

61. Mr. LESSIR (Observer for Tunisia) said that the real situation of human rights in the world showed that the remedies advocated by the international community had not had the expected results. In his country's view, both the diagnosis and the treatment were at fault. For a correct diagnosis, human rights terminology should be redefined so that the objective reasons for violations of those rights could be thoroughly analysed. It required careful thought. More than ever there was a need for a global approach, based on development, democracy and human rights, since the latter could not thrive without economic, social and cultural development. In that context he applauded those NGOs which displayed objectivity and impartiality, in contrast to some which made fallacious and unfounded allegations.

62. His country had chosen to adopt a global and multidimensional approach to human rights, based on the promotion of the individual. Among reforms adopted since 1987 were the amendment to the rules on the duration of police custody and preventive detention; the appointment of a judge to head the prison administration; the adoption of a law on the organization of political parties; the amendment to the Electoral Code enabling four of the six legal opposition parties to take seats in parliament; an amendment to the Press Code strengthening freedom of opinion and expression; the appointment of various bodies or individuals with responsibility for human rights; encouragement for the creation of human rights associations, of which there were currently 6,000; the promotion of women's rights and the adoption in 1995 of a code of protection for children; the introduction of human rights education in schools

and universities, and in training courses for judges and the police; and the establishment of a national solidarity fund to which private individuals and companies could contribute voluntarily so as to enable people in remote areas to enjoy decent accommodation, sanitation, education, communication, electricity and drinking water.

63. New measures to advance the democratic process were contained in a bill presented to parliament on 3 June 1997. The Constitution was to be reformed by extending the use of the referendum on constitutional and legislative matters and on questions of major importance affecting the county's future; lowering the minimum age for deputies from 25 to 23; and underlining the principle of equality between men and women by making any person with a Tunisian father or a Tunisian mother eligible to be a deputy. Parliament had also recently considered a bill on public funding for political parties, thus guaranteeing them a role in the political life of the country and improved dialogue.

64. Such multidimensional action had produced good results. The middle classes represented 60 per cent of the population. Poverty levels had dropped from 13 per cent in 1980 to 6 per cent in 1995. The rate of children in full-time education was 98 per cent, while 78.3 per cent of dwellings were owned by their inhabitants. Those were all indicators of stability and social balance, as a result of the numerous reforms undertaken by Tunisia, which would guarantee the success of efforts to extend human rights and the well-being of the individual.

HUMAN RIGHTS OF INDIGENOUS PEOPLES

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND (agenda item 7)

65. The CHAIRMAN said, in marking the International Day of Indigenous People, that the Sub-Commission was undoubtedly the main - and perhaps the only - forum in the world for indigenous people. The meetings of the Working Group on Indigenous Populations were attended by representatives of indigenous people throughout the world, discussing their problems and seeking solutions to their concerns. In 1994 the Sub-Commission had adopted a resolution on the Draft United Nations declaration on the rights of indigenous peoples, prepared by the Working Group and currently under discussion by the Commission. He hoped that the Commission would approve it with all speed, since a lack of progress would be deeply frustrating for indigenous people who had put their hopes in the Sub-Commission. Indigenous peoples occupied 30 per cent of the land in Latin America and other countries, but those same lands contained 60 per cent of natural resources, such as forests, rivers, mines and tourist areas. Indigenous people would clearly come under increasing pressure. For that reason the International Day of Indigenous People, which acknowledged the need to protect the human rights of indigenous people, was particularly important.

66. Mrs. DAES read out a statement by the Secretary-General of the United Nations on the occasion of the International Day of Indigenous People.

67. August 9 had been designated by the General Assembly as the day on which to celebrate the diversity of the cultures of indigenous peoples and to renew

efforts to improve their well-being and ensure their human rights. To advance their interests, the United Nations had launched the International Decade of the World's Indigenous People for the period 1995-2004. The goal of the Decade was to strengthen international cooperation for the solution of problems faced by indigenous people in such areas as human rights, the environment, development, education and health. The Decade was in its third year and the United Nations system was actively building partnerships with indigenous peoples and organizations to develop programme activities to address their concerns and bring about improvements in conditions.

68. Many indigenous people suffered from crippling poverty, discrimination and poor access to basic necessities such as education, housing and health. Indigenous people had also experienced, over many years, the gradual deterioration of their land and resource base. The United Nations had undertaken to draw up a declaration of rights as soon as possible. The declaration would create a framework for national and international action in favour of indigenous people. Indigenous people would play an active part in reforming the United Nations to meet the challenges of the next millennium. The proposal by the World Conference on Human Rights to establish a permanent forum for indigenous people within the United Nations was under serious discussion. While standards for the protection of their rights were being developed, the United Nations system as a whole, through its development, environment and economic and social programmes, would continue to promote activities with the full participation of indigenous organizations. They should be brought into all projects that affected them as a matter of principle and as a means of guaranteeing the success of such projects. Indigenous people were renowned as guardians of nature and they had been the first proponents of sustainable development. Their expertise, experience and wisdom were needed as solutions to the problems of the new century were sought. As one of their representatives had said, indigenous people were on the one hand the most oppressed people on the globe, but on the other hand they were the hope for the future of the people of the planet. In that spirit he called on the international community to acknowledge the injustices of the past and to move towards a more understanding future.

69. The CHAIRMAN invited representatives of two indigenous peoples to address the Sub-Commission on the occasion of the International Day of Indigenous People.

70. Mr. MANCHINERY, a member of the Manchineri people attending the Sub-Commission under the Indigenous Fellowship Programme, said that in his country, Brazil, there lived more than 334,000 indigenous people in 215 population groups, speaking 173 separate languages. In the whole Amazon region there were 1.5 million indigenous people in 400 distinct population groups, which made it one of the richest parts of the planet in terms of human and natural resources. He stressed the importance of the Sub-Commission as a forum of debate on fundamental rights and as a guarantee of the continued existence of indigenous peoples. All forms of violations suffered by indigenous peoples should be ended, such as exploitation of women, abuse of authority and invasion of territory. Above all, those who had murdered indigenous peoples should be tried and sentenced; justice should not be only for those with economic power, as happened in some countries where rights

existed only on paper. He appealed to each member of the Sub-Commission to work for mechanisms to assure the basic principles of fundamental legal and customary rights for each population on the basis of the right to life, equality, freedom and justice, without discrimination on the grounds of race, colour, religion or tradition.

71. Mr. KALIMBA ZEPHYRIN, a member of the Matwa people of Rwanda in the Great Lakes region, applauded the fact that the Sub-Commission had moved to set up the Working Group on Indigenous Populations in 1982 in response to the needs of indigenous people, who had been pressing for the creation of such a group since 1977. There were huge contradictions in the life of indigenous people. On the one hand, progress had visibly been made at the philosophical and legal level, but on the other hand the vast majority of indigenous people lived under the threat of genocide and the reality of ethnocide. They were caught in armed conflicts, their lands and resources were being plundered and their cultures, languages and traditions were in danger. That meant that part of the world's spiritual and cultural wealth was also under threat, because all cultures formed part of the world's heritage.

72. In the 20 years since the first International NGO Conference on Discrimination against Indigenous Populations in the Americas much had been achieved within the Sub-Commission, the United Nations Educational, Scientific and Cultural Organization, the International Labour Organization, the World Conference on Human Rights and the United Nations itself. Above all, many opportunities for dialogue had been created, thus sparing the world tears and blood. The Sub-Commission had an important role to play in resolving the contradiction between progress at the international level and deterioration in the actual situation of indigenous peoples. The Sub-Commission's particular contribution would be its work on the draft United Nations declaration on the rights of indigenous peoples and the establishment of a permanent forum for indigenous people.

73. Mr. ALFONSO MARTÍNEZ said that he attached great importance to the continuation of the work of the Working Group, which constantly developed ideas to bring about an end to centuries of discrimination against indigenous people. One of the most important elements was the draft declaration; he urged member States to encourage its speedy adoption and, once it had been adopted, to respect its main points. Secondly, he believed that the Working Group should continue its work even when the permanent forum for indigenous people was in place. The two bodies would have different mandates and different roles to play, but both were viable and could be complementary.

The meeting rose at 1 p.m.